



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
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Applications of

**AMERICAN AIRLINES, INC.
CONTINENTAL AIRLINES, INC.**

for allocation of frequencies (United States-Ecuador)

**Dockets OST-96-1124
OST-96-1174
OST-96-1160**

Application of

CONTINENTAL AIRLINES, INC.

for exemption pursuant to 49 U.S.C. section
40109 and allocation of frequencies (New York-Ecuador)

Docket OST-96-1001

ORDER ALLOCATING FREQUENCIES

Summary

By this order we (1) allocate American Airlines 3.5 weekly frequencies to provide service between Dallas/Ft. Worth and Quito and Guayaquil, Ecuador, via Panama City, Panama; and (2) grant Continental Airlines an exemption and allocate it 7 weekly frequencies to provide service between New York and Guayaquil, Ecuador, via Panama City, Panama.

Background

Under the U.S.-Ecuador Air Transport Agreement, U.S. carriers designated for combination service are limited to a specified number of weekly, round-trip frequencies with narrow-body equipment or the wide-body equivalent.¹ Specifically, under the agreement, 19.5 weekly frequencies are available for service from Miami; 7 from Los Angeles; 15 from New York; and 10.5 from "Other" U.S. points, *i.e.* not New York, Miami or Los Angeles. The bilateral Agreement also contains a banking provision that permits the United States to allocate any frequencies that were unused during the previous corresponding traffic season. Continental holds all the "Other" U.S. points frequencies and it currently provides daily service between

¹ One wide-body aircraft, except a B747, is equivalent to 1.5 narrow-body aircraft.

Houston and Ecuador via Panama City with three flights to Guayaquil and four to Quito using B-727 equipment. Continental was recently granted an allocation of 7 New York frequencies and it began service between New York and Quito via Bogota using B-757 aircraft on June 6, 1996.² The other 8 New York frequencies have not been allocated. American has been allocated all the available frequencies from Miami. The frequencies from Los Angeles have not been allocated.

Applications

American filed applications for (1) allocation of 7 frequencies to provide scheduled combination service between New York and Quito, Ecuador, and (2) allocation of 7 frequencies to provide scheduled combination service between Dallas/Ft. Worth and Quito and Guayaquil, Ecuador. Continental filed an application for allocation of 7 frequencies to provide scheduled combination service between New York (Newark) and Ecuador.³

American proposes daily service between New York and Quito via Bogota using B-757 aircraft beginning June 1, 1996, and daily service between Dallas/Ft. Worth and Ecuador via Panama City with three flights serving Guayaquil and four serving Quito with B-727 aircraft beginning June 16, 1996. In support of its New York-Ecuador application, American states that it holds the necessary underlying route authority to conduct the proposed services;⁴ that there is no U.S. flag single-plane service between JFK Airport and Quito; and that valuable route rights in limited entry markets should not be wasted. In support of its Dallas/Ft. Worth-Ecuador application, American states that Continental was awarded all the 10.5 frequencies for other U.S.-Ecuador markets based on a Houston-Ecuador service proposal using wide-body aircraft; that Continental, however, is now operating narrow-body aircraft so that 3.5 frequencies are not being used; that under the banking provisions of the bilateral Agreement, American can add the 3.5 frequencies not operated last year to the existing unused frequencies to provide daily service for a year; that there is now no U.S.-flag single-plane service between Dallas/Ft. Worth and Ecuador; that American's proposed service would provide competition to the proposed code-share arrangement between Continental and a Panamanian carrier involving Ecuador; and that it is not the Department's policy to permit valuable route rights to be wasted.

Continental proposes daily service between New York (Newark) and Guayaquil via Panama City using B-757 aircraft beginning June 30, 1996. In support of its application, Continental states that its proposed service will benefit the public by providing the first daily Newark-Panama nonstop service and the first daily Newark-Guayaquil single plane service; that Continental will be able to compete more effectively with foreign carriers and American by

² See Notice of Action Taken dated February 14, 1996, Docket OST 95-1001, for New York and Order 92-3-45 for other U.S. points.

³ American also filed a motion for expedited handling by show-cause procedures and Continental filed a motion to consolidate the two applications for contemporaneous consideration. Continental supported American's motion for expedited action. We have decided to grant the motions since the carriers proposed to begin their service shortly and their applications are mutually exclusive. We discuss in the text of this order our decision to proceed to a final decision in this case.

⁴ See Order 90-5-5, 92-6-21.

connecting these markets with its extensive Newark hub; and that its proposed service is consistent with the bilateral agreements between the United States and both Ecuador and Panama. Since Continental does not hold the underlying economic authority to provide New York(Newark) -Guayaquil service via Panama City, it sought exemption authority along with its frequency allocation.

Pleadings

Each of the applicants filed answers opposing the other's application(s).⁵ In addition, the Regional Business Partnership(Newark) filed an answer supporting Continental's application, citing the absence of single plane service between Newark and either Panama or Guayaquil, and adding that such service would enhance Continental's effort to develop Newark as an international hub. Also, the Dallas/Ft. Worth Parties support American's Dallas/Ft. Worth-Ecuador application, stating that it would open a new competitive gateway to Ecuador at the one of the busiest airports in the world.

American states that Continental should not be allocated fourteen of the fifteen available frequencies between New York and-Ecuador, especially since Continental holds 10.5 Houston-Ecuador frequencies and also plans to engage in a major code-sharing program with a Panamanian carrier that involves service to Quito and Guayaquil.⁶ American further states that its proposed service is consistent with the Department's policy to promote both intragateway and intergateway competition in New York-South American markets and that American's New York- Bogota-Quito service will compete with Continental's proposed service via Newark and also with foreign flag service at the New York gateway. American states that it did not object to Continental's earlier application for 7 frequencies because Continental did not reveal at that time that it would soon seek seven more frequencies. Under these circumstances, American states that Continental's application for Newark-Panama City-Guayaquil should be denied or, alternatively, that the Department should vacate the earlier approval for Continental's Newark-Bogota-Quito service.⁷

Continental states that its New York-Ecuador proposal would offer greater competitive benefits in the limited entry New York-Ecuador market because American holds all the Miami-Ecuador frequencies and it dominates the U.S.-Ecuador market by operating 19 weekly frequencies through its Miami megahub. Continental states that American's proposal to duplicate Continental's recently authorized New York-Bogota-Quito service represents an

⁵ One of Continental's answers was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion..

⁶ Continental has an application pending to engage in a code-sharing program with several foreign carriers based in Central America, including reciprocal code-sharing operations by Continental and Compania Panamena de Aviacion (Copa) to Ecuador. See Docket OST-96-1080, filed February 16, 1996.

⁷ American filed a petition for review of staff action, i.e. Notice of Action Taken by the Director, Office of International Aviation, dated February 14, 1996, Docket 96-1001. Continental filed an answer stating that American's petition should be rejected because under the Department's rules American is not eligible to file a petition in this case. We will accept American's petition, and as discussed in the text of this order, we have decided to deny American's request that we vacate the Director's action granting Continental authority for services in the Newark-Quito market.

effort to delay Continental's service and limit competition in both the Ecuador and Colombia markets. Continental also states that American currently offers one-stop New York-Ecuador service via Miami while Continental proposes new nonstop New York-Panama City service and new one-stop New York-Guayaquil service. Continental further states that its only Guayaquil service is via Houston and it needs service at both Ecuador points via the larger New York gateway to compete more effectively with American's Miami monopoly.

Continental states that American's Dallas/Ft. Worth-Ecuador application should be dismissed to the extent it seeks reallocation of any frequencies now allocated to Continental. Continental states that none of its frequencies are available for reallocation because beginning September 5, 1996, Continental plans to operate a daily nonstop Houston-Quito/Guayaquil flight and also continue four weekly Houston-Panama City-Quito flights. Continental states that it has served the Houston-Ecuador market since 1991 and now will offer the first nonstop flight while American has only recently expressed interest in this market in an effort to reduce competition. Continental further states that the Department should defer action on American's request for the banked frequencies until the Department approaches Ecuador about Continental's proposed code-share service to determine whether frequencies are required for such service.

Decision

We have decided to award 7 weekly frequencies to Continental for Newark-Guayaquil service and 3.5 weekly frequencies to American for Dallas/Ft. Worth-Quito/Guayaquil service. Taking into consideration that the rights at issue are currently available, that our overall objective is to maximize use of our bilateral rights, and that both carriers propose June startup dates and have had several opportunities in the context of these applications to comment on each other's service proposals, we have decided to proceed to a final decision in this case and to make the authority awarded effective immediately. The authority will remain in effect for one year from the date of service of this order.

American and Continental are the only two carriers currently serving Ecuador. American provides all of the available service from Miami, 19.5 weekly frequencies, and Continental holds all of the 10.5 weekly frequencies available for service from "Other" cities, and serves Houston. Both of these carriers have presented proposals to operate the additional 10.5 weekly frequencies that are available for distribution--7 from Newark and 3.5 banked weekly frequencies from the "Other" cities frequency pool. We believe that an allocation to both carriers--seven to Continental for services in the Newark-Guayaquil market and 3.5 to American for new services in the Dallas/Ft. Worth-Ecuador--market is the most effective way to promote improved competition and service in the U.S.-Ecuador market. Specifically, award of the New York-Ecuador frequencies to Continental will enhance intergateway competition with the Miami gateway; and the award of Dallas/Ft. Worth-Ecuador frequencies to American will enhance intergateway competition with the Houston gateway, thereby significantly expanding the availability of alternative services to travelers and shippers in the U.S.-Ecuador market. Beyond these benefits, the traveling public will get new service at Dallas/Ft. Worth and additional service at New York. Taken together, we believe that these

results will promote greater overall public benefits than any other distribution of the 10.5 weekly frequencies.

The award of 7 weekly frequencies to Continental for service in the New York (Newark)-Guayaquil market will supplement the 7 weekly frequencies that we recently allocated Continental for service in the New York (Newark)-Quito market. The 14 weekly frequencies will make Continental a more effective competitor vis-à-vis American's East Coast services. Currently, American holds all of the 19.5 weekly frequencies for service from Miami, by far the largest U.S.-Ecuador market, and American is the dominant carrier at the Miami gateway. Continental began daily service in the New York (Newark)-Quito market on June 6. That service now provides the only alternate gateway (to Miami) for travelers from the U.S. East Coast. The addition of 7 weekly frequencies for Continental's New York (Newark)-Guayaquil service will enable Continental to compete more effectively with American's triple daily Miami-Ecuador services that serve both Quito and Guayaquil.⁸ We believe that such competitive intergateway services result in the greatest price and service options to the public. An award to Continental in this case achieves that objective, bringing more effective gateway competition in the U.S.-Ecuador market. In these circumstances, we believe that selection of Continental in the New York-Ecuador market better serves the public interest than an award to American.

In reaching this conclusion, we have carefully considered American's argument that approval of its application would enhance competition in the limited-entry New York-Ecuador market. We agree with American that there would be benefits to the public from competitive U.S. carrier services from the same U.S. gateway. Indeed, our preference would be to authorize both carriers' services and let the marketplace determine the services actually provided. However, our rights to serve Ecuador are not open and we must look to the result that we believe will best provide the most public benefits under the limited rights that are available. In this case, we believe that the public benefits to be derived from competitive U.S.-flag intergateway competition outweigh any competitive advantage American seeks from offering competitive intragateway services at the New York gateway.⁹

We have also considered the comparative benefits of the carriers' proposed service via intermediate points and find that there are no factors that warrant a different conclusion regarding the awarding of frequencies to Continental. Both carriers propose service via third countries: Continental will offer the first nonstop U.S.-Flag service in the New York (Newark)-Panama City market; while American would offer competitive nonstop service in the New York-Bogota market. Both of these intermediate markets would provide significant public benefits and the difference between them is not decisional.

As we did with respect to the Miami and New York markets, we also find that increasing competition with respect to Central U.S.-Ecuador services will provide significant public benefits. As noted above, Continental serves Ecuador from Houston. An award of 3.5

⁸ American operates daily nonstop service in the Miami-Guayaquil market and 12 weekly flights in the Miami-Quito market.

⁹ For the same reasons stated above, we will grant American's petition for review of the Director's February 14 allocation of seven weekly frequencies to Continental for services in the Newark-Bogota-Quito market, and, on review, deny its request that we vacate the Director's award.

weekly frequencies to American for services in the Dallas/Ft. Worth-Ecuador market not only will provide Dallas/Ft. Worth with its first single-plane service to Ecuador, but also will provide important alternative service options for travelers from the western United States for which Dallas/Ft. Worth or Houston is a preferred hub. As a result of our combined awards here, both the central U.S. and the eastern U.S. will have effective competition from two U.S. carriers, American and Continental. As discussed above with respect to the award in the New York-Ecuador market, we will make American's allocation granted here effective immediately for one year.

The frequencies we are allocating to American are the 3.5 banked frequencies that Continental has not used. While the provisions of the U.S.-Ecuador Agreement prevent us from granting American the necessary authority to use these frequencies on a long-term basis, American may use the frequencies for the year's period that they are available. We discuss below our decision with respect to American's request for reallocation of a portion of Continental's currently allocated 10.5 weekly frequencies to serve points other than Miami, New York, and Los Angeles.

Continental has not persuaded us that we should defer allocation of the banked frequencies until we determine whether Ecuador will require the use of frequencies for Continental's proposed code-share service via Panama City operated by a foreign airline. It has not been our policy to allocate U.S. carrier frequencies in limited entry markets for services operated by foreign carriers where other U.S. carriers seek to use them for services operated with their own aircraft.¹⁰ We see no reason to deviate from that policy here and Continental has not presented any.

Since the number of frequencies we are allocating American is fewer than it requested, we will require American to notify us within seven calendar days of the date of service of this order whether it intends to use this allocation.

Consistent with our current practice in frequency allocation cases, we will subject the frequency allocations awarded here to a 90-day dormancy condition. The frequency allocations will expire automatically and the frequencies will revert back to the Department for reallocation if they were not used for a period of 90 days.

Reallocation of Continental's "Other" Cities Ecuador Frequencies

We have decided to deny American's request to reallocate the 3.5 weekly frequencies currently held by Continental. We find no reason to reallocate Continental's "Other" cities Ecuador frequencies to American at this time. Continental has presented a credible proposal that it plans to use all its currently allocated frequencies for expanded and enhanced Houston service beginning September 1996. Continental proposes a new daily nonstop service between Houston and Ecuador (compared to its existing one-stop service) and also four weekly flights between Houston and Quito via Panama City. Given Continental's near-term service plans and the public benefits that we believe will result from Continental's proposed

¹⁰ See, e.g., Order 96-2-32 at 7 & 8.

Houston-Ecuador service, we do not find that the public interest is best served by reallocation of Continental's frequencies.

ACCORDINGLY,

1. We grant Continental Airlines, Inc., an exemption in Docket OST-96-1174 to engage in scheduled foreign air transportation of persons, property, and mail between New York, New York (Newark), and Guayaquil, Ecuador, via Panama City, Panama;
2. We allocate Continental Airlines, Inc., 7 weekly round-trip frequencies to engage in scheduled foreign air transportation of persons, property, and mail between New York, New York, (Newark) and Guayaquil, Ecuador, via Panama City, Panama;
3. We allocate to American Airlines, Inc., 3.5 weekly round-trip frequencies to engage in scheduled foreign air transportation of persons, property and mail between Dallas/ Ft. Worth, Texas, and Quito and Guayaquil, Ecuador, via Panama City, Panama;
4. The authority granted in paragraphs 1, 2 and 3, above, will become effectively immediately and will remain in effect for one year from the service date of this order;
5. The frequencies allocated in paragraphs 2 and 3, above, will be subject to the condition that they will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days as described in this order;
6. We require American Airlines, Inc., to notify the Department by letter to this docket and served on all parties no later than seven calendar days from the date of service of this order whether it intends to use the frequencies allocated to it by ordering paragraph 2, above;
7. We grant the motion of American Airlines, Inc. for expedited action filed in Docket OST-96-1124;
8. We grant the motion of Continental Airlines, Inc., to consolidate its application filed in Docket OST-96-1174 with the application of American Airlines filed in Docket OST-96-1124;
9. We grant the motion of Continental Airlines, Inc., to file an otherwise unauthorized document in Docket OST-96-1124;
10. We deny the application of American Airlines in Docket OST-96-1124 for an allocation of frequencies to provide service between New York, New York, and Quito, Ecuador, via Bogota, Colombia;
11. We grant the petition of American Airlines, Inc., for review of staff action in Docket OST-96-1001 granting Continental Airlines, Inc. authority to provide service between New York, New York (Newark) and Quito, Ecuador, via Bogota, Colombia, and, on review, deny its request that we vacate the Director's action;
12. Except to the extent granted or denied, we deny all remaining requests in these dockets;

13. We may amend, modify, or revoke this order at any time without hearing; and
14. We shall serve this order on American Airlines, Inc.; Continental Airlines, Inc., the Regional Business Partnership (Newark); the Dallas/Ft. Worth Parties; the Ambassador of Ecuador in Washington, D.C., the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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